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4 **UNITED STATES DISTRICT COURT**

5 **DISTRICT OF NEVADA**

6 LOGAN R. VOLPICELLI, )  
7 )  
8 Plaintiff, ) 3:10-cv-00548-RCJ-RAM  
9 vs. )  
10 )  
11 UNITED STATES OF AMERICA, ) **ORDER**  
12 )  
13 Defendant. )  
14 \_\_\_\_\_)

15 In 2002, the Internal Revenue Service levied against certain property then in the custody  
16 of the Reno Police Department in order to satisfy in part the tax liability of Ferrill Volpicelli  
17 (“Ferrill”). In 2003, Ferrill sued the United States on behalf of his twelve-year-old son, Logan  
18 Volpicelli (“Logan” or “Plaintiff”), arguing that the property levied belonged to Logan, and not  
19 to Ferrill. That case is Case No. 3:03-cv-00090-HDM-VPC. The Hon. Howard D. McKibben  
20 entered judgment against Ferrill and for the United States, and the Court of Appeals dismissed  
21 Ferrill’s appeal for failure to prosecute. Logan, who is now an adult, has now brought the same  
22 suit in pro se. As his father alleged in the previous case, Logan argues that his great-  
23 grandmother had “inadvertently” made several checks out to Ferrill, though those checks were  
24 meant for the benefit of Logan and his sister. The Reno Police Department seized the checks,  
25 some cash, and other property from Ferrill’s safe deposit box pursuant to a search warrant.

26 Plaintiff argues that the previous case was dismissed without prejudice, but this does not  
27 appear to be the case. Judge McKibben entered judgment in favor of the United States and  
28 against Ferrill. (*See* J., July 29, 2004, ECF No. 52 in Case No. 3:03-cv-00090-HDM-VPC).

1 Ferrill's appeal was dismissed for failure to prosecute. (*See Order, Feb. 23, 2005, ECF No. 63 in*  
2 *Case No. 3:03-cv-00090-HDM-VPC*). The case probably should have been dismissed without  
3 prejudice in the district court so that Plaintiff could bring the present action upon reaching  
4 majority. *See Johns v. Cnty. of San Diego*, 114 F.3d 874, 878 (9th Cir. 1997). But it was not.  
5 Final judgment was entered against Ferrill in his capacity as Plaintiff's representative. The  
6 present claim is therefore precluded. Plaintiff's remedy at this point is to file a Rule 60(b)(6)  
7 motion for relief from judgment in Case No. 3:03-cv-00090-HDM-VPC. The Court expresses  
8 no opinion on the merits of the claim.

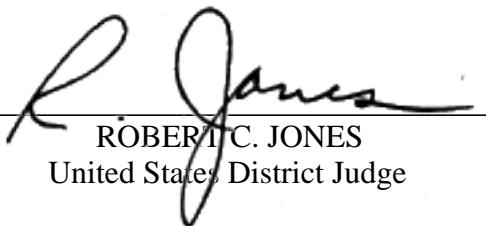
9 **CONCLUSION**

10 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 12) is GRANTED and  
11 all other pending motions are DENIED as moot.

12 IT IS FURTHER ORDERED that the Clerk shall enter judgment and close the case  
13 accordingly.

14 IT IS SO ORDERED.

15 Dated this 5th day of July, 2011.



16 ROBERT C. JONES  
17 United States District Judge

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